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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/367,019	10/14/1999	PHILIPPE BOYE	10350/168	3779

1912 7590 11/19/2003

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90 PARK AVENUE
NEW YORK, NY 10016

EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/367,019

Applicant(s)

BOYE, PHILIPPE

Examiner

John J. Guarriello

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/15/2003, 6/19/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-31 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

15. The Examiner acknowledges papers # 13 of 5/15/2003, and the amendment of 6/19/2003.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restriction

17. The Examiner affirms the election of Group II, claims 18-31. Group I, claims 9-17 are withdrawn regarding the lack of unity requirement under 35 U.S.C, 121 and 372. Applicant's arguments regarding the Restriction requirement made under Lack of Unity guidelines regarding National Stage application filed under 371 have been considered, but, paper # 9 of 8/1/2002, the written Restriction, clearly clarifies the Groups, and since applicant elected Group I, claims 18-31, the restriction is made final for reasons of record.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 18-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Pernick 5,735,145 in view of MacIntyre 3,575,776.

Pernick describes a multilayer knit fabric with a first hydrophobic layer (corresponding to the claimed hydrophobic layer) and a second hydrophilic layer (corresponding to the claimed hydrophilic layer) with the layers being secured together by spacer yarns (corresponding to the claimed linking threads), (see abstract). Pernick describes the hydrophobic layer and the hydrophilic layer are joined together in a spaced relationship with spacer yarns (which correspond to the claimed linking threads), (column 1, lines 10-14; column 2, lines 66-67; column 3, lines 1-10). Pernick differs from the claimed invention because it is silent about linking threads but states spacer yarns which are similar.

MacIntyre describes an inflatable fabric with spaced woven layers (corresponding to the claimed invention with air circulation means) with an outer layer, an inner layer, and an area or zone where

air may be circulated (corresponding to air circulation means of the claimed invention), (column 1, lines 11-19). MacIntyre describes spaced woven layers of fabric (corresponding to the hydrophobic first layer of the claimed invention), (column 1, lines 63-65). MacIntyre describes an intermediate zone between the layers of a woven web containing filling threads, (column 2, lines 6-12). MacIntyre describes the first layer outer and the second layer joined together by filling threads, (column 2, lines 4-7) which corresponds to the claimed link threads.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ filling threads of the the woven fabric of MacIntyre (corresponding to the claimed linking threads) in the fabric of Pernick motivated with the expectation that the spacing between the layers would give improved wicking, (column 2, lines 49-50 of MacIntyre). Regarding any third layer, it would have been obvious to one of ordinary skill in this art to optimize the addition of other layers in order to provide protection from


environmental conditions as appropriate as noted in MacIntyre,
(column 2, lines 25-26).

Applicant's arguments regarding Klein were considered but are
not appropriate with the new grounds of rejection.

20. Any inquiry concerning this communication or earlier
communications from the examiner should be directed to John J.
Guarriello whose telephone number is 703-308-3209. The examiner
can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful,
the examiner's supervisor, Terrel Morris, can be reached on (703)
308-2414. The fax phone number for the organization where this
application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this
application or proceeding should be directed to the receptionist whose
telephone number is 703-308-0661.


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700